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Attorneys for Defendants  
Scene 7, Inc. Long Term Disability Plan  
and  
Prudential Insurance Company of America

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

Dawn Rutherford,

Plaintiff,

vs.

Scene 7, Inc. Long Term Disability Plan,  
Prudential Insurance Company of America,

Defendants.

) Case No. C 07-6426 WHA

) **SUPPLEMENTAL JOINT CASE**  
) **MANAGEMENT STATEMENT**

) **Case Management**

) **Conference:** July 17, 2008

) **Time:** 8:00 a.m.

) **Courtroom:** 9, 19<sup>th</sup> Floor

)  
Hon. William H. Alsup

The parties hereto, pursuant to the court's Clerk's Notice Rescheduling Hearing (July 2, 2008) submit this Supplemental Joint Case Management Conference Statement.

1 **(1) Jurisdiction and Service.**

2 This is an action for disability benefits under the Employee Retirement Income Security  
3 Act (ERISA), 29 USC §1001 *et. seq.* This court has subject matter jurisdiction pursuant to 29  
4 USC §1132(e) and 28 USC §1367(a). There are no existing issues respecting personal  
5 jurisdiction or venue. All parties have been served and have appeared.

6  
7 **(2) Facts.**

8 Plaintiff's Statement:

9 Ms. Rutherford was an employee of Scene 7, Inc. She was covered for long-term  
10 disability benefits under defendant Scene 7, Inc. Long Term Disability Plan ("Plan"). In August  
11 2001, she initiated a claim for long-term disability benefits based on her diagnoses of  
12 fibromyalgia and depression. The Plan provided benefits through August 2003, but terminated  
13 benefits at that time, pursuant to a determination by defendant Prudential Insurance Company  
14 of America, the claims administrator and insurer for the Plan. Ms. Rutherford undertook  
15 several levels of appeal, and Prudential affirmed the termination of benefits in July 2004,  
16 November 2006, and July 2007.

17  
18 Defendants' Statement:

19 Defendants contend the decision to terminate plaintiff's long term disability benefits was  
20 correct. Plaintiff's long term disability benefits were terminated because it was determined  
21 plaintiff was no longer disabled from performing the material and substantial duties of her  
22 regular occupation. The medical evidence pertaining to plaintiff did not support a functional  
23 impairment precluding plaintiff from working in her regular occupation.

24 The Administrative Record shows that plaintiff was not eligible for coverage pursuant to  
25 the terms of her Plan and defendants' decision was proper.

26 The disputed factual issue is whether plaintiff satisfied the Plan's definition of disability  
27 as of the date of denial of the claim for benefits.

1  
2 **(3) Legal Issues.**

3       The parties anticipate legal disputes in this matter concerning Ms. Rutherford's claimed  
4 entitlement to disability benefits. Specific anticipated issues include the following: (1) whether,  
5 on a *de novo* adjudication by the court, Ms. Rutherford is disabled, according to the pertinent  
6 policy provisions, as a function of one or more physical medical conditions; (2) whether Ms.  
7 Rutherford's claim for disability benefits is limited by a policy provision pertaining to "self-  
8 reported symptoms." The "self-reported symptoms" issue is before the court in connection with  
9 the summary judgment motion filed by the Plan and Prudential, which is scheduled for hearing  
10 on July 17, 2008.

11  
12 **(4) Motions.**

13       Currently pending, and scheduled for hearing on July 17, are the summary judgment  
14 motion filed by the Plan and Prudential, and Ms. Rutherford's motion for leave to conduct  
15 discovery.

16       Pending the outcome of the July 17 summary judgment hearing, the parties anticipate  
17 this matter will be resolved via cross-motions for judgment pursuant to Rule 52 of the federal  
18 Rules of Civil procedure.

19  
20 **(5) Amendments of Pleadings.**

21       The parties do not anticipate adding or dismissing any parties, claims, or defenses, or to  
22 otherwise amend the pleadings absent some change in controlling law.

23  
24 **(6) Evidence Preservation.**

25       Plaintiff's Statement:

26       Ms. Rutherford has not destroyed any evidence in her possession or control relevant to  
27 the issues reasonably evident in this action. As an individual plaintiff, she has no document-

1 destruction program or other ongoing systematic erasures of e-mails, voice mails, and the like.

2  
3 Defendants' Statement:

4 Defendants contend the relevant evidence in this action is contained in the  
5 Administrative Record. In any event, defendants have not destroyed, and will not destroy,  
6 relevant evidence.

7  
8 **(7) Disclosures.**

9 Plaintiff's Statement:

10 The parties have met and conferred, and Plaintiff has made her initial disclosures  
11 pursuant to Rule 26 of the Federal Rules of Civil Procedure.

12  
13 Defendants' Statement:

14 Defendants contend initial disclosures are not required because this action will be tried  
15 on the Administrative Record only. Defendants have produced the Administrative Record.

16  
17 **(8) Discovery.**

18 No discovery has been taken to date.

19  
20 Plaintiff's Statement:

21 Ms. Rutherford believes discovery is appropriate, for reasons discussed in her motion  
22 for leave to conduct discovery, scheduled for hearing on July 17.

23  
24 Defendants' Statement:

25 Scene 7 and Prudential contend there is no basis to conduct discovery and the court  
26 should not permit any additional discovery, for reasons discussed in their papers opposing Ms.  
27 Rutherford's motion for leave to conduct discovery.

1  
2 **(9) Class Actions.**

3 Not applicable.  
4

5 **(10) Related Cases.**

6 There are no related cases or proceedings pending before another judge of the court or  
7 before another court or administrative body.  
8

9 **(11) Relief.**

10 Plaintiff's Statement:

11 Ms. Rutherford seeks recovery of disability benefits pursuant to 29 USC §1132(a)(1)(B).  
12 Based on currently available information she approximates the present value of benefits to  
13 date at \$197,500, with benefits continuing to accrue at the approximate rate of \$3,137 per  
14 month. She also seeks an injunction under 29 USC §1132(a)(3) enjoining Prudential from  
15 violating ERISA and its enabling regulations with respect to requests for documents pertinent  
16 to administrative appeals of adverse benefit determinations. Ms. Rutherford also seeks pre-  
17 and post-judgment interest, and reasonable attorney fees pursuant to 29 USC §1132(g).  
18

19 Defendants' Statement:

20 Plaintiff is not entitled to receive future long term disability benefits under the terms of  
21 the Plan. Under the Plan, plaintiff is only entitled to benefits so long as she is disabled. The  
22 court cannot make any determination of future benefits, because of the availability of sedentary  
23 employment for plaintiff and technological advances that allow gainful alternative employment.

24 Defendants seek judgment in their favor on all claims and reserve the right to seek fees  
25 under 29 USC §1132(g).  
26  
27  
28

1 **(12) Settlement and ADR.**

2 The parties believe settlement discussions could be productive, and suggest a referral  
3 to mediation.  
4

5 **(13) Consent to Magistrate Judge for All Purposes.**

6 The Plan does not consent to have a magistrate judge conduct all further proceedings.  
7

8 **(14) Other References.**

9 The parties do not consider this matter to be suitable for reference to binding arbitration,  
10 a special master, or the Judicial Panel on Multidistrict Litigation.  
11

12 **(15) Narrowing of Issues.**

13 Pending the outcome of the summary judgment hearing on July 17, the parties do not  
14 believe this inquiry may be answered in the affirmative. The parties will continue to consider,  
15 and meet and confer on any issues that arise which may streamline trial of this matter.  
16

17 **(16) Expedited Schedule.**

18 The parties do not believe the case could be practicably expedited beyond the typical  
19 time frame for resolution of cases involving disputed entitlement to ERISA benefits.  
20

21 **(17) Scheduling.**

22 The parties do not anticipate expert testimony, and therefore do not request a schedule  
23 for designation of experts or expert discovery. The parties request a trial date within one year  
24 of the filing of the complaint, which was filed December 20, 2007. The parties request that all  
25 other deadlines be set in accordance with this court's custom and practice.  
26  
27  
28

1 **(18) Trial.**

2 Plaintiff's Statement:

3 Ms. Rutherford anticipates a bench trial, or alternatively cross-motions for judgment  
4 under Rule 52, the hearing for which should be completed within one day.

5  
6 Defendants' Statement:

7 Defendants contend the streamlined procedures applicable in an ERISA trial should  
8 apply. An ERISA trial does not involve the normal parameters of a typical trial. See *Kearney*  
9 *v. Standard Ins. Co.*, 175 F.3d 1084, 1094-1095 (9<sup>th</sup> Cir. 1999) (*en banc*). The parties agree  
10 trial is not by jury, but to the bench. Defendants do not anticipate calling live witnesses or  
11 experts, and any testimonial evidence submitted will be in the form of declarations. The only  
12 documentary evidence presented will be the Administrative Record.

13 Defendants contend the matter should be decided on the parties' trial briefs and the  
14 Administrative Record, and any additional evidence which may be permitted. Defendants  
15 request the simultaneous exchange of opening trial briefs followed by responding trial briefs for  
16 this matter. *Kearney, supra*, 175 F.3d at 1090.

17  
18 Richard Johnston will try the case for Ms. Rutherford, and Ronald Alberts and/or Tad  
19 Devlin will try the case for the Plan and Prudential.

20 The parties agree the pretrial filings normally required, such as pretrial conference  
21 statements, are unnecessary. The parties specifically request a waiver of the Rule 16 pretrial  
22 conference and related pretrial requirements, pursuant to Ninth Circuit precedent.

23  
24 **(19) Disclosure of Non-party Interested Entities or Persons.**

25 The parties are not aware of any other non-party interested entity or person.  
26  
27  
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1 **(20) Other matters.**

2 The parties are presently unaware of any other matters that may facilitate the just,  
3 speedy, and inexpensive disposition of this matter. They will continue to consider ways to  
4 further streamline this case and will bring any suggestions to the court should they arise.  
5

6 Dated: July 10, 2008

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8 /s/

Richard Johnston  
Attorney for Plaintiff  
Dawn Rutherford  
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12 Gordon & Rees LLP

13  
14 /s/

By: Tad A. Devlin  
Attorneys for Defendants  
Scene 7, Inc. Long Term Disability Plan  
and  
Prudential Insurance Company of America  
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